

Interest: Provides and operates trunked private mobile radio systems through the United Kingdom.

Specific Services:

- Since there is no operational data available to indicate the likely principal use of the 220 MHz local systems, or an adequate sampling of licensees who have actually constructed their systems, there is no basis now to conclude that it is "reasonably likely" that the use of the 220 MHz local licenses will be to provide service to subscribers for compensation. (3)

STEPHAN C. SLOAN

Interest: Unknown; focus of suggestions is on designated entities

Payment Methods:

- Installment payment plans for designated entities should not include a provision for automatic forfeiture of license in the event that a designated entity is unable to make timely payments; FCC should retain flexibility and discretion. (2)
- Bidders should not be required to tender payment of all applicable fees 60 days prior to the auction date, because of the encumbering of necessary capital for an undue period of time; the FCC should adopt a system similar to the FDIC's approach in real estate auctions where bidders tender applicable fees upon arrival at the auction. (3)

Treatment of Designated Entities:

- In addition to assisting designated entities to enter the PCS arena, FCC also should provide a means for designated entities to exit the market without having to forfeit all of their investment; suggests the FCC consider adoption of a "Bail Out Provision." Adoption of a BOP mechanism would permit designated entities to transfer their licenses, thus facilitating speedy and efficient aggregation across both spectrum and geographic region. (1-2)
- As a result of FCC buildout schedules, hardware and backhaul infrastructure may not be available at economically feasible levels to a designated entity; the FCC therefore should permit designated entities to file petitions for relief from buildout schedules. (2)
- Set-asides for designated entities are necessary because designated entities are unable to compete for capital with major corporations, local cellular carriers, and LECs. (2)

Other:

- The Congressional Budget Office's estimating scheme for the value of PCS spectrum fails to take into account the difficulties of interoperability across bands above and below 2 GHz and ignores the existence of incumbent fixed microwave services in the PCS spectrum and the cost and time table for their relocation. (3)

Interest: Association membership composed primarily of small business holders of PCS experimental licenses.

Sequence of Bidding:

- Licenses should be auctioned in a sequence beginning with the largest MTA. After the largest MTA, its component BTAs should be auctioned. Then the next largest MTA and its component BTAs should be auctioned, and so on. Licenses should be issued at the same time for each MTA and its component BTAs. (5)

Combinatorial Bidding:

- Combinatorial bidding should not be allowed for BTAs, but is acceptable for MTAs. (5)

Treatment of Designated Entities:

- The FCC should resist efforts by large special interests to pare down or to eliminate the two set-aside PCS frequency bands. (2-3)
- Definition of a Small Business, Minority and Woman-Owned Business, and Rural Telco (SWMR):
 - Must be a small business as defined in 13 CFR § 121 (less than \$6 million in net worth and less than \$2 million in profit after tax for the past two years).
 - Size less than 200 employees. (6)
- For consortia bidding, 90% of the ownership should be SWMRs to qualify for a set aside. There should be no non-SWMR purchase option allowed to be in existence at the time of the auction that would bring the non-SWMR interest to greater than 90% within 5 years. For individual members of the consortia, each individual must meet the \$6 million net worth requirement to be eligible for a SWMR set-aside. (6)

Payment Methods:

- Upfront payment of 2 cents per MHz per POP is appropriate. (4)
- The upfront payment should be refunded to a SWMR if it is later disqualified for any reason other than a flagrant violation of the rules. (4)

- A payment equal to the difference between the upfront payment and 20% of the license price, paid at the time of auction, is onerous for small businesses. This payment should be reduced to 10%. (4)
- The same financing terms made available to SWMRs for the set-aside licenses should also be available for any license acquired by a qualified SWMR. (5)
- The payment term should be the full initial license term. For PCS, this term is 10 years. The first payment should not be due for two years, and quarterly payments should be .5% of the license price until year 5 when the balance due will be amortized by equal payments through year 10. (5)
- Financing organizations must be allowed to have a security interest in a license purchased at auction. (6-7)

SMALL RSA OPERATORS

Interest: Current owners and managers of operating RSA systems who timely filed applications for a limited number of unserved area cellular markets, with the intention of constructing and operating cellular systems in those unserved areas. (1)

Specific Services:

- The FCC should cut short its consideration of the use of auctions for already existing pending unserved area applications, and do as it is doing in MDS, SMR, IVDS, PCP, 220 MHz, MAS and every other service -- conduct the lotteries and issue authorizations as soon as possible. (2)
- There is no real potential for abuse by speculators if lotteries are held. (2)
- For the FCC to move from lottery to auction for these pending unserved area applications now is to delay licensing from approximately March, 1994 until literally the end of this century, if the MMDS experience with pre-selection preference amendments is any guide. The need to finish licensing these markets quickly and inaugurate service is the paramount concern, and that goal is best met by conducting lotteries as soon as possible. The delays inherent in a midstream shift to auctions would preclude initiations of service for years, possibly to the next century. (8, 12)
- Congress did not give the FCC discretion to go to auction in any context where to do so would violate the procedural due process rights of pending applicants, or where to do so would be arbitrary or capricious. Moving to auctions for cellular unserved areas in midstream would be arbitrary and capricious, and would deny the due process rights of pending applicants. (9, 13)
- Congress intended that the FCC use lotteries for the unserved area applications filed and pending before July 26, 1993. (12)

THE SMALL TELEPHONE COMPANIES OF LOUISIANA

Interest: An ad hoc group of small Louisiana telephone companies

Applicability of Competitive Bidding:

- Adoption of the FCC's intermediate link proposal would harm the public interest by unnecessarily increasing the cost of delivery of service, especially in rural areas where the cost of wireless technology is significantly less than the cost of copper wire systems. (3-4)

Sequence of Bidding:

- Opposes the proposal to auction licenses with the largest spectrum bands and geographic areas first because it presumes that the market value of smaller bands and areas is determined by their relationship to larger markets. (6)
- Suggests that the FCC begin by auctioning the smaller bands of spectrum first with the smallest geographic area in each band auctioned first. (6)
- If licenses are auctioned sequentially, with larger players allowed to reserve larger spectrum blocks first, the licensing process must ensure that license terms do not confer an undue advantage on those players by allowing them to enter the market first. (7)

Combinatorial Bidding:

- Combinatorial bidding will favor large entities with immediate access to a cash reservoir, contrary to the statutory mandate to avoid excessive concentration of licenses and to promote an equitable distribution of licenses among geographic areas. (7-10)
- Combinatorial bidding would undermine the license area and spectrum allocation plan established by the FCC in creating small market channel blocks and geographic areas in the PCS Order. (9-10)

Payment Methods:

- Supports the proposal to allow designated entities to utilize alternative payment methods, including installment payments, but believes any interest assessed on the bid price should be at the same rate as that assessed when the government borrows from the U.S. Treasury. (14-15)

- Rural telcos should be permitted to exhibit a reduced upfront fee of 1 cent per MHz per pop as a condition of entry. (17-18)
- The initial upfront payment should serve as a deposit for the protected entities without any additional payment, and a minimum period of two business days should be allowed to tender the deposit. (18)

Treatment of Designated Entities:

- Proposes that the FCC utilize its definition of "small telephone company" (one that serves fewer than 50,000 access lines) for eligibility for a rural telco preference. (11-13)
- The scope of treatment afforded rural telcos should not be tied to their local service area nor should the presence of REA financing reduce the degree of preferential treatment. (13)
- Eligibility for rural telco preferences should be limited to license applications where the real party in interest is a rural telco and auction rules should include attributable ownership provisions. (13-14)

Safeguards:

- Supports adoption of a rule prohibiting transfer of a license won by a designated entity to any entity not qualifying for preferential treatment. (16)
- Construction requirements for MTA licenses should be geographically, as well as population, based to preclude auction winners from merely targeting high-density urban areas. (16) They should also be tailored to particular needs (i.e., a licensee in one of the smaller BTA blocks should not be required to meet any benchmark other than initiation of service during the first five years). (16-17)

Application Processing Requirements:

- Significant experience in providing telecommunications services should count as evidence that an entity is a serious and qualified bidder. (17)

Specific Services:

- Supports set-aside channel blocks C and D for broadband PCS bidding by designated entities but believes the FCC should grant these entities some form of preferential treatment in other spectrum blocks as well, such as tax certificates and reduced upfront payments. (19-20)

SOUTHWESTERN BELL CORPORATION

Interest: Regional Bell Operating Company.

Applicability of Competitive Bidding:

- "Mutually exclusivity" does not exist for shared private systems (e.g., dispatch), but may exist where preferential license rights exist (e.g., a pioneer's preference). (3-4)
- Agrees Congressional intent requires that renewals and private licenses should not be auctioned, but notes that private services should be defined as "services that do not involve the receipt of compensation from subscribers" only in the context of this proceeding. (4-5)
- The principal use of classes of licenses should govern determinations of what is subject to auctions to implement legislative intent and minimize administrative costs. (5-6)
- The FCC should distinguish point-to-point microwave systems that directly provide service to subscribers, which should be auctioned, from intermediate links, which should not be auctioned since they do not meet the statutory criteria and would be impractical and counter-productive to auction in any event (especially cellular links and backbones). (6-11)

Bidding Methods:

- Oral bidding should be the preferred methodology since it is likely to assign licenses to the highest valuer, has lower private costs, facilitates aggregation, is fair and open, is simple and understandable, does not require assessing what premium others will pay for a license, provides advantages in increased information to bidders, and avoids collusion (according to Federal Reserve determinations). (15-20)
- Sealed bids result in "shaved" bids that may not give licenses to those willing to pay the most, promotes collusion, and has no advantages over oral bidding. (21-22)

Sequence of Bidding:

- Favors auctioning of licenses, one frequency band at a time, moving geographically west to east or east to west to facilitate geographic clustering. (35)
- Allowing aggregated bidding for Blocks D-G for PCS appears to have merit, and suggests sealed bids to be opened before oral licensing of the BTAs. (36)

Combinatorial Bidding:

- Opposes combinatorial bidding (especially nationwide) as contrary to Congressional policies regarding deployment speed, diversity, competition, and avoiding excess concentration, and as contrary to the clear weight of evidence regarding national licenses in the PCS context. (22-24, 26-28)
- Combinatorial bidding should never allow sealed bids to be submitted after oral bidding on properties--combinatorial bids should be opened before oral bids. (24-25)
- If the AT&T/McCaw merger proceeds, AT&T should be attributed ownership of McCaw's cellular properties and AT&T/McCaw should not be permitted to engage in nationwide aggregated bidding. (29-29)
- Oral bids allow economic aggregation of properties. (29-31)

Payment Methods:

- Does not oppose lump sum payments, but objects to royalties as PCS is highly risky. (36)
- Suggests allowing bidders to deposit T-bills, since they would obtain the benefit of accrued interest. (38)
- Minimum bids should not be required, since they will distort the market process. (38)
- The 2¢/MHz/POP formula is acceptable, but a maximum deposit of \$50 million per bidder covering deposits for all markets on a one-time basis is appropriate for oral individual non-aggregated market bidders; a \$200 million deposit is appropriate, however, for any nationwide sealed bids. (38-40)

Treatment of Designated Entities:

- Does not oppose alternative payment methods for designated entities, with prior caveat about royalties. (36-37)
- Suggests two improvements to FCC's process: (1) allowing simple control (rather than 50.1% ownership) to facilitate creative financing options with non-designated entity backers and (2) minimal transfer limitations. (41-42)

Safeguards:

- Disappointed in construction benchmarks adopted for PCS; suggests stronger build-out requirements are appropriate for auctioned authorizations. (31)
- Anti-collusion requirements should not complicate the bidding process; attempting to eliminate mutual exclusivity should be condoned and bid rigging schemes are addressable under antitrust laws in any event--the division between proper and improper is combining to attain a common set of licenses versus dividing markets. (32)

Application Processing Requirements:

- Generally supports proposed processing procedures with the following modifications: (1) 30 day notice of the auction is the minimum necessary and 90 days would be advisable; (2) the FCC should provide notice of the entities interested in bidding; (3) upfront payments should be retained where an auction winner is unqualified or ineligible; and (4) short form applications should contain a number of certifications, and the deposit should be construed as a "good faith" bond. (33-34)

Specific Services:

- Cellular fill-in licenses should be auctioned and subject to short term build-out requirements. (13)
- ESMR licenses, but not government SMR licenses, should be auctioned since they anticipate exclusive use. (13-14)
- AVM licenses should not be auctioned as they are secondary, but consideration should be deferred to AVM rulemaking. (14)
- PCS licenses should be auctioned. (15)

SPRINT CORPORATION

Interests: Interexchange, local exchange and cellular interests.

Applicability of Competitive Bidding:

- Competitive bidding should not be allowed in the licensing of point-to-point microwave facilities. These are network components of telecommunications companies, and the licenses are typically based on the company's individual business plans. Most applications are neither contested nor are there competing requests for routes. (22)

Combinatorial Bidding:

- Combinatorial bidding would create one or dominant PCS providers, which runs counter to the Congressional goals of avoiding concentration of market power and distributing licenses among a variety of applicants. (4) While parties who value the individual licenses highly will be the ones who obtain them, only a very large concern with deep pockets may have the capacity to achieve market dominance. (5)
- Any scheme of aggregating blocks of spectrum or multiple geographic license areas will prove arbitrary and exclude bidders that would have bid for a lot containing some but not all of either the spectrum or areas contained in the lot being auctioned. (6)
- Combinatorial bidding disadvantages current cellular providers that may not be eligible in some MTAs or BTAs in a "winner take all" national license bid or in smaller lots of spectrum or geographic areas offered for combinatorial bidding. (6)

Payment Methods:

- A two-tier system should be created for deposit fees, because some bidders may want to bid on several properties not knowing which ones they will end up owning. Others may be interested in only one property. A large up front deposit will ensure that only serious bidders will be involved. A party should provide a deposit of \$10 million dollars or the FCC's proposed deposit calculation, which ever is more. (16)
- All licensees should be able to make installment payments on their spectrum bids over the term of their license. This way, all PCS licensees can concentrate capital on quick deployment. Plus, it would allow PCS

licensees to spread their payments over the expansion schedule of their systems, thus as more customers come on line, larger license payments are required. (17)

- A 20% down payment on a winning bid is excessive and undercuts the Congressional objective of quick deployment. Because capital for deployment will be scarce and consumer demand is unknown, excessive down payments make no sense. A 10% down payment is more reasonable. (18)

Treatment of Designated Entities:

- Using set-asides will not promote economic opportunity among a wide variety of applicants. By grouping all preference holders into one broad category, the FCC ignores the diversity that exists among preference holders. Rural telcos enjoy a substantial cash flow and ready access to capital, and they have the ability to outbid small businesses and companies owned by women and minorities. Alternative measures for preferential treatment should be used, such as bidding preferences, tax certificates, or deferred payment schedules. The FCC can tailor preferences to the different needs of the different preference holders. (9)
- A spectrum set-aside might be beyond the boundary of Congressional intent, and open to a court challenge, since racial and gender-tailored measures face strict scrutiny by the courts. (11)

Safeguards:

- The FCC should allow current cellular carriers to bid on PCS licenses exceeding 10 MHz in geographic areas where they are currently ineligible (due to the Second PCS Order). The FCC must ensure the cellular carriers will not speculate on new PCS licenses in after market transactions. (7)
- Spectrum set-asides might encourage trafficking. By granting licenses to parties that never intended to construct or operate cellular systems, an after market was created by participation in the lottery process. Competitive bidding that produces market prices would stop this. (12) The FCC should establish an additional license payment if preference-based spectrum is transferred within 6 years of the initial licensing to a non-preference holder. (13) The FCC should impose terms that restrict relationships between the preference

holder licensee and any management company or other similar entity that builds or manages the licensee's PCS system. These management companies should be prevented from holding a significant ownership interest in such licenses. (15)

- The FCC should rely on current antitrust laws for the prevention of collusion in the PCS service area. To compete with large businesses with deep pockets in the PCS area, consortia of several potential PCS licensees should be formed to compete with the large existing carriers. (19) Split market arrangements, such as those in the cellular context, would not be anticompetitive because several other PCS licensees and at least one other cellular carrier will be in the area to provide competition. (20)

Specific Services:

- Competitive bidding should not be extended to unlicensed cellular areas. This is not a new service where new spectrum has been allocated. Additionally, applications accepted prior to July 26, 1993 are exempt from bidding. Only new applications filed after July 26, 1993 should be subject to competitive bidding. (23)

Other:

- The Second PCS order should be reconsidered, making eligibility to hold PCS licenses turn on actual market power. The ineligibility standard should be raised to anything exceeding 20% of the POPS in the service, or any ownership interest exceeding 20% in the PCS area. (3)

HENRY J. STAUDINGER

Interest: A partner in a group that has applied for nearly 40 cellular fill-in licenses.

Specific Services:

- The FCC should not use competitive bidding with regard to cellular unserved area licenses.
- Invested a lot of time and money in complying with current FCC policy. The FCC would penalize applicants by changing the allocation process retroactively.

ARLENE F. STREGE**Interest:**

- Working woman for a large telecommunications company

Treatment of Designated Entities:

- The FCC should require 50.1 percent control by designated groups to qualify for a preference -- anything less would allow for mistreatment by these entities and would be difficult to test. (p. 1)
- Experience in the wireless industry before September 23, 1993 (announcement of the PCS Report and Order) or some other appropriate date should be required to minimize abuse of fronts. (pp. 1-2)

SUITE 12 GROUP

Interest: Licensee and equipment manufacturer in the 28 GHz local multipoint distribution service (LMDS).

Payment Methods:

- Successful small businesses should be able to pay the amount of the winning bid on an interest-free, installment basis over the life of the license. (12)

Treatment of Designated Entities:

- The proposed definition of small business is unrealistic. Basing the definition on the reporting of net income after taxes is ineffective and subject to varying accounting practices. Capping the number of employees at 1,500 is far too high to qualify for special treatment as a small business. Therefore, businesses with less than \$75 million dollars in annual sales should be treated as small businesses. (8-11)

Safeguards:

- In order to prevent incumbent service providers from conspiring to defeat new services, the FCC must restrict incumbent spectrum users in competing services to holding only non-controlling (less than 50%) interests in LMDS applicants or licensees. For purposes of LMDS, competing incumbent services would include cable broadcast and telephone companies. (13)

SYSTEMS ENGINEERING, INC.

Interest: Business owned entirely by minorities; mission is to offer specialized PCS services to business customers.

Combinatorial Bidding:

- Group combinatorial bidding for C and D channel blocks should not be allowed; such bidding would provide disincentives to bid for those channel blocks. (2)

Payment Methods:

- Supports proposal to allow designated entities to pay for the bid amount in installments, with interest at prime plus 1%; period for payment should equal term of the license; non-designated bidders who include minorities or women should be allowed to pay in installments a percentage of their bid amount equal to 100% of their women-minority ownership. (4)

Treatment of Designated Entities:

- Commission should use existing certification programs to insure qualifications of women and minority applicants; applicants should be required to prove their status by submitting current certification issued by state where their business is based. (1)
- Preferences for women and minorities should be awarded in addition to preferences for small businesses and rural telcos; designated entities should receive a credit equal to 50% of the percentage ownership of that entity by women and minorities, up to 25% credit. (2)
- Credits for women and minority ownership participation should be awarded to all non-designated bidders; a bidder should receive credit equal to 50% of the percentage ownership of that entity by women and minorities, up to 10% credit. (3)
- Designated entities should be allowed to obtain sub-licensing from primary licensees for areas with population of less than 5,000 at a price equal to price paid by primary licensee. (3)

Safeguards:

- Defaults in payment of license fees by designated licensees should result in re-auction of license; only designated entities should be permitted to rebid. (4)

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- There should be no limitations concerning transfer of ownership from one designated entity to another, as long as total percentage of designated entity ownership is not less after the transfer. (4)

TAXPAYER ASSETS PROJECT

Interest: Non-profit citizens organization started by Ralph Nader to monitor the management and sale of government property; interest in the FCC's proposed rules for PCS spectrum allocation are part of a TAP initiative to investigate spectrum allocation and the new rules for the nation's telecommunications infrastructure.

Bidding Methods:

- At a minimum, the FCC should require that one block C and one block D license in each market be auctioned on the basis of the highest royalty or profit share. The FCC should offer these blocks after the initial licenses are auctioned, and the license holders should be required to pay upfront fees that are equal to one third or one half the winning bids of the licenses sold for cash. (2-3)

Payment Methods:

- FCC should allow some bidders on PCS spectrum to offer royalties or profit shares as an alternative to upfront cash payments. (2)

Other:

- Competition and diversity will be enhanced through restrictions on cross-ownership; telephone, cable, and cellular companies should not be able to acquire PCS licenses in their own service areas. (1-2)
- The only current restriction on aggregation of PCS spectrum is the 40 MHz limitation; FCC instead should allow aggregation only after finding that a proposed aggregation is in the public interest. FCC does not yet know whether the smaller PCS blocks can adequately serve users, and it should allow some experimentation before permitting aggregation into the hands of fewer licensees. (2)

TELEPHONE AND DATA SYSTEMS, INC.

Interest: A telecommunications holding company whose subsidiaries include local exchange companies, United States Cellular Corporation, and American Paging.

Applicability of Competitive Bidding:

- Competitive bidding should not be required for initial licensing in services where channels are licensed on a "shared use" non-exclusive basis, for all renewals of licenses and permits, and for modifications of existing licenses. Nor should there be auctions for intermediate link, point-to-point microwave, private operational fixed microwave and CARS facilities. (4)
- Supports FCC's "principal use" approach. (5)
- Agree that licenses for broadband PCS and narrowband PCS, commercial nationwide 220-222 MHz, 800 MHz and 900 MHz SMR, IVDS and common carrier radio services should be subject to competitive bidding. (5)

Bidding Method:

- Supports open ascending bidding as the FCC's basic auction method and the use of this method specifically for all broadband and narrowband PCS licensing. (6)
- Does not support use of sealed bids in the bidding for groups of PCS licenses, where homogeneous licenses are offered or where the FCC expects very few bidders. (7)
- One bidder should be designated for each applicant, but the FCC should allow others (up to 5 persons including the "bidder") to consult with that designated bidder in the auction room. Computers and communications equipment should be allowed. (23)
- The FCC should establish a stopping rule of five minutes. (23)

Sequence of Bidding:

- MTA markets should be sequenced from largest to smallest (in terms of population coverage). The two 30 MHz licenses in each MTA market should be licensed together using simultaneous ascending-bid auctions. (10-11)
- A natural grouping for channel blocks C and D consists of all BTAs within a single MTA. Proposes that the aggregation of the two channel blocks within each BTA in the group be offered as an item for bid as well as the individual channel blocks. Simultaneous bidding should be allowed on licenses in all of the listed BTAs. (11)